

To: Webster, David[Webster.David@epa.gov]; Houlihan, Damien[houlihan.damien@epa.gov]; Papadopoulos, George[papadopoulos.george@epa.gov]
Cc: Dierker, Carl[Dierker.Carl@epa.gov]; Moraff, Kenneth[Moraff.Ken@epa.gov]
From: Stein, Mark
Sent: Fri 1/10/2014 3:00:16 PM
Subject: FYI - Article

Friday, January 10, 2014

KEY ISSUES: [TCE](#) [Climate NSPS](#) [Fracking](#) [GHG Permits](#)

[Top of Form](#)

[Advanced Search](#)

[Bottom of Form](#)

[Daily News](#)

Advocates Continue Site-Based Cooling Water Push Despite Pending Rule

Posted: January 9, 2014

Environmentalists plan to ask EPA to revoke a Massachusetts nuclear power plant's water discharge permit, arguing the agency has failed for too long to update the permit for its cooling water intake system, further underscoring advocates' plan to challenge such permits on a case-by-case basis despite EPA's pending cooling water regulation.

The rule, which under a consent decree must be finalized by Jan. 14, is expected to continue the best professional judgment (BPJ) analysis that state regulators conduct when determining appropriate intake technologies to reduce mortality to aquatic life. Advocates are pushing for a national closed-cycle cooling retrofit requirement, though industry favors less costly technologies.

One key question is how a formal Endangered Species Act (ESA) review will affect the final rule, with a biological opinion from the Fish and Wildlife Service and the National Marine Fisheries Service set to be released alongside the regulation.

Even though the ESA review could bolster environmentalists' call for more stringent requirements, many advocates do not expect the rule to contain a strong national standard, which is likely to prompt additional litigation following the rule's release, and are continuing their efforts on individual permits.

"However the rule comes out, it's not going to make a difference," an environmentalist predicts. "It's still going to basically come down to BPJ, which is essentially what the standard is now."

For example, advocates say they will soon ask EPA Region I to revoke the cooling water permit for the Pilgrim Nuclear Power Station in Plymouth, MA.

The group Ecolaw in October 2012 filed a notice of intent to sue EPA and plant owner Entergy over discharges related to its once-through cooling system but declined to file suit after the agency said it would issue a revised permit by December 2013. But sources say a proposed permit is not slated to be issued anytime soon.

A second environmentalist said a revised permit would likely require closed-cycle cooling, which drastically reduces water withdrawals and the resulting entrainment and impingement of fish species. But at a projected cost of up to \$500 million, the retrofit would likely spur the early retirement of the plant, which was recently re-licensed by the Nuclear Regulatory Commission for another 20 years.

"Rather than go through the full charade of draft permit, public comment period, etc., why not just retire the permit?" the source says, adding that would require the plant itself to close.

A third environmentalist had previously said "if EPA issues a rule that looks like the proposal, it's perhaps even more important" for local groups to continue pressing for stringent permits.

And a source with the Delaware Riverkeeper Network, which sued regulators in Delaware and New Jersey in state courts to force action on revising cooling water permits for two facilities, earlier said the pending rule is not something states can "hang their hat on" to justify inaction on permits.

Permitting Practices

Those remarks come on the heels of an Oct. 2 report from five environmental groups, which identifies best and worst permitting practices among 10 states while also giving local groups "the facts they need to advocate for the protection of America's lakes, rivers, oceans and estuaries."

The first environmentalist notes that the Oyster Creek nuclear plant in Forked River, NJ, agreed to close 10 years before its license will expire after New Jersey regulators deemed it would require closed-cycle cooling.

A draft permit Region I issued for the Merrimack Station coal-fired plant in New Hampshire would also require a closed-cycle retrofit.

"All over the country, whenever you're seeing these once-through cooling permits come up for renewal, they're being told you've got to change to closed-cycle cooling," the source says. "The writing is on the wall. Everyone knows that's coming."

Pilgrim's cooling water permit expired in 1996, and it has been administratively extended ever since. Advocates say that's far too long to wait to review the plant's cooling water system.

"The five-year permit was designed so that companies would have to update their technology to

keep up with improving technology," the first source says.

In arguing against a petition for writ of mandamus filed by Sierra Club that sought revised permits for two coal-fired plants, the agency in a [March brief](#) filed in the U.S. Court of Appeals for the 1st Circuit said the Pilgrim plant is one of three EPA-permitted facilities that "will threaten greater environmental harm" than the two coal plants. The agency also deemed completing a revised permit for Pilgrim a "high priority for the Region."

"That's all well and good for EPA to say that, but then what are their actions?" the source says, noting the agency lost a part-time staffer who was crafting the permit and has not filled the position for several months.

The source also points to [an October 2012 letter](#) from then-Rep. Ed Markey (D-MA) that says, "I am concerned that EPA has been derelict in its duties to protect endangered species and other wildlife from effects of cooling water intake structures at [the Pilgrim plant.] I am even more concerned that the issue at [Pilgrim] may not be an isolated incident, but may be indicative of an ongoing practice that leaves wildlife entrained in a bureaucratic black hole and without adequate protection." -- *Lee Logan* (llogan@iwpnews.com This e-mail address is being protected from spambots. You need JavaScript enabled to view it)

Mark A. Stein

Senior Assistant Regional Counsel

U.S. EPA - Region 1

5 Post Office Square, Suite 100

Mail Code ORA-18-1

Boston, MA 02109-3912

Tel. (617) 918-1077

E-Fax: (617) 918-0077

email: stein.mark@epa.gov